

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DONALD RASMUSSEN JR.,

Plaintiff,

v.

JUSTIN HOBBS and JANE DOE
HOBBS, husband and wife, and their
marital community,

Defendants.

NO: 12-CV-0555-TOR

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are Defendants' Motion for Summary Judgment (ECF No. 9) and Defendants' Motion to Strike (ECF No. 25). These matters were heard with oral argument on March 20, 2013. Stephen Ross Matthews appeared on behalf of the Plaintiff. George Fearing and Andrea Claire appeared on behalf of Defendants. The Court has reviewed the relevant pleadings and supporting materials, had the benefit of oral argument, and is fully informed.

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ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT ~ 1

1 BACKGROUND

2 Plaintiff Donald Rasmussen Jr. (“Rasmussen”) claims Defendant Justin
3 Hobbs (“Hobbs”) is liable under 42 U.S.C. §1983 for constitutional violations
4 including judicial deception and unlawful arrest. Rasmussen claims that Hobbs
5 knowingly filed a materially false affidavit with the Spokane County District Court
6 in order to establish probable cause. Presently before the Court is Defendants’
7 motion for summary judgment.

8 FACTS

9 Rasmussen resides with Lisa Jacobsen (“Jacobsen”) who he “guess[es] you
10 could say” is his “significant other,” although they “keep [their] affairs separate.”
11 Rasmussen Dep., ECF No. 13 at 5. They have a “romantic relationship” and have
12 lived together on and off since 1996. *Id.* Rasmussen and Jacobsen were living
13 together in 2010. *Id.* at 6. Brittany Jacobsen (“Brittany”), now an adult, is
14 Jacobsen’s biological daughter. Rasmussen has no biological children. *Id.* at 7-8.
15 Brittany likely lived in Rasmussen’s home a majority of the time since she was
16 five years old, although she was not living with Rasmussen at the time of the
17 incident in question, and Rasmussen testified that he allowed others to assume that
18 he was Brittany’s father. *Id.* at 12-14.

19 On May 30, 2010, Jacobsen and Rasmussen went to Brittany’s residence,
20 which Jacobsen owned, to discuss Brittany’s boyfriend. Jacobsen told Brittany

1 that the boyfriend could not stay in the home when he had warrants. *Id.* at 20-21.
2 Rasmussen recalls that during the discussion Brittany became enraged, kept
3 charging at and physically pushing Jacobsen, and calling her mother obscene
4 names including “bitch,” “cunt,” and “whore.” *Id.* at 22-24. According to
5 Rasmussen, he reached over Jacobsen’s head and pushed Brittany away from her
6 mother, at which point she fell on her bum and “bumped her face on the
7 countertop” on the way down. *Id.* at 24-25. Rasmussen testified that his right
8 hand, but not his fist, made contact with Brittany’s right-hand jaw. *Id.*

9 At approximately 9:00 p.m. on May 30, 2010, the Cheney Police dispatcher
10 asked Officer Hobbs to come to the lobby of the police station to speak with
11 Brittany. Hobbs Decl., ECF No. 14 at ¶ 3. Dispatch conveyed to Hobbs that
12 Brittany reported her “father” struck her with his fist and knocked her out.
13 According to Hobbs, because of the word “father,” Hobbs proceeded to investigate
14 Brittany’s allegations as a potential domestic violence crime. *Id.* Hobbs met with
15 Brittany in the lobby of the police headquarters. Brittany allegedly informed
16 Hobbs that her parents, Donald and Lisa Rasmussen, visited her at her home earlier
17 that evening and complained about her current boyfriend. *Id.* at ¶ 4. Hobbs recalls
18 Brittany stating that she and her mother argued, with her dad standing to her right,
19 and that after she called her mother foul names, her father Donald punched her in
20 her right jaw. Officer Hobbs concluded that Rasmussen likely assaulted Brittany

1 because of where Rasmussen was allegedly standing before the punch, and the
2 location of the bruise on Brittany's cheek.

3 Upon further questioning by Hobbs, Brittany reported that Rasmussen was
4 not her biological father. *Id.* at ¶ 7. According to Hobbs, Brittany claimed
5 Rasmussen and her mother were married and that she lived in their household since
6 she was a baby. Brittany disputes that she made this statement, and asserts she
7 knew Rasmussen and her mother were not married and that they did not share a
8 household when she was a baby. Decl. B. Jacobsen, ECF No. 22 at ¶ 2. After
9 interviewing Brittany, Hobbs believed he had probable cause to arrest Rasmussen
10 for domestic assault, however, he asserts that he traveled to Rasmussen's home
11 with the intention to hear his side of the story. ECF No. 14 at ¶ 57.

12 The parties heavily dispute the nature of the contact between Hobbs and
13 Rasmussen. Rasmussen claims Hobbs was agitated and aggressive when he
14 approached Rasmussen, and that Hobbs immediately arrested him, with no further
15 questioning, after confirming his identity. ECF No. 20 at ¶ 6. According to
16 Hobbs, Rasmussen confirmed an argument between Brittany and Jacobsen. Hobbs
17 also maintains that when he told Rasmussen about Brittany's report that he
18 punched her, Rasmussen responded "there are certain things you just don't say to
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1 your mother”¹ and told Hobbs that he could reach his own conclusion. Hobbs
2 further contends that he asked Rasmussen if he was Brittany’s father and that
3 Rasmussen confirmed that he was not her biological father but she lived in his
4 house since she was a baby. ECF No. 14 at ¶ 10. Hobbs asked Rasmussen if he hit
5 Brittany, and Rasmussen replied that he would not comment further. Again,
6 Rasmussen denies that he made any of these statements, and disputes that Hobbs
7 asked him if he was married to Jacobsen or if he was Brittany’s father. ECF No.
8 20 at ¶ 6. Rasmussen did not tell Hobbs that Brittany was not his daughter.

9 Hobbs arrested Rasmussen for the assault on Brittany and concluded the
10 assault should be classified as domestic violence based on his understanding that
11 Rasmussen was the stepfather of Brittany. ECF No. 14 at ¶ 14. Hobbs concluded
12 that Rasmussen and Jacobsen were married based on Brittany’s statements and the
13 fact that Rasmussen wore a wedding ring.² *Id.* at ¶ 15. Hobbs transported
14 Rasmussen to the Spokane County jail, and completed a citation charging
15 Rasmussen with violating RCW 9A.36.041, assault in the fourth degree, domestic

16 ¹ In his deposition, Rasmussen confirms that this statement was made but recalls it
17 was made by Jacobsen. ECF No. 13 at 31-32.

18 ² Rasmussen testified that he wore a ring on his wedding ring finger, but claims it
19 was not a wedding ring, and not worn because of his relationship with Jacobsen.
20 ECF No. 23 at 7-8.

1 violence. *Id.* at ¶ 16. After the arrest Hobbs prepared a “Statement of Arresting
2 Officer and Preliminary Finding of Probable Cause” which included the statement
3 “Brittany stated to this officer and can testify that her father, Donald Rasmussen
4 ..., was at her residence and they became involved in a heated verbal argument
5 over the boyfriend that she is currently seeing.” ECF No. 14 at 16. Rasmussen
6 was arrested on Saturday of the Memorial Day weekend, and held without bond
7 allegedly due to the charge of domestic violence. ECF No. 20 at ¶ 9. He was held
8 in jail on Saturday night, Sunday, Monday, and Tuesday. Prior to this incident,
9 Rasmussen had never been arrested or charged with a crime. While in jail, he was
10 strip searched, held in a “filthy” cell with a man who had open wounds and
11 displayed odd and disturbing behavior. As a result of being held in jail,
12 Rasmussen claims his blood pressure skyrocketed, he lost time at work, and he
13 continues to be emotionally upset by the experience.³ *Id.* at ¶ 11.

14 ³ Hobbs offers additional facts acquired after the lawsuit was filed indicating that
15 Lisa was, at various times, identified in police reports as Lisa Rasmussen-Jacobsen
16 or Lisa Rasmussen. ECF No. 12 at ¶¶ 82-88. Rasmussen contends these facts are
17 based on hearsay evidence and asks the court to strike the evidence. ECF No. 19 at
18 5. The Court declines to consider evidence acquired after this lawsuit was filed.
19 *See Allen v. City of Portland*, 73 F.3d 232, 236 (9th Cir. 1995)(“Probable cause
20 must be determined at the time the arrest is made.”).

DISCUSSION

I. Motion to Strike (ECF No. 25)

In support of his response to Defendants' motion for summary judgment, Rasmussen filed a declaration by Donald Brockett, elected Prosecuting Attorney of Spokane County until his retirement in 1994. Brockett opines that if the affidavit of probable cause was filed without the statement that Rasmussen was Brittany's "father," there would have been no factual basis for the domestic violence charge, and it would have been possible for Rasmussen to post a \$500 bond and be released. ECF No. 21 at ¶ 7. Hobbs asks that the declaration be stricken, as Brockett was not listed as a witness in Rasmussen's initial disclosures, the declaration is not based on personal knowledge, and it contains legal conclusions and speculation. ECF No. 25. Rasmussen replies that Brockett's testimony was secured only in response to the summary judgment motion. However, Rasmussen utilizes most of his response to the motion to strike to argue that the supplemental declaration of Justin Hobbs improperly raises new facts, including, that he considers a step-father to be a father. ECF No. 32.

First, the Court denies the motion to strike as essentially moot, because the Court does not rely on this declaration for the substance of its ruling on summary judgment. Rather, the Court relies entirely on undisputed facts and deposition testimony from the relevant parties. Second, as to Rasmussen's objections to the

1 reply materials submitted by Hobbs, specifically that his deposition testimony
2 conflicts with his second declaration, the Court notes that in his deposition Hobbs
3 answered “No” to the question “[i]n your mind, is there a difference between a
4 father and a stepfather?” ECF No. 23 at 14. Thus, the Court finds no evidence
5 that the second declaration submitted by Hobbs was an effort to contradict
6 previous testimony, and declines to “disregard” the allegedly improper reply
7 arguments, as requested by Rasmussen.

8 **II. Motion for Summary Judgment (ECF No. 9)**

9 **A. Standard of Review**

10 The Court may grant summary judgment in favor of a moving party who
11 demonstrates “that there is no genuine dispute as to any material fact and that the
12 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In ruling
13 on a motion for summary judgment, the Court must only consider admissible
14 evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764 (9th Cir. 2002). The
15 party moving for summary judgment bears the initial burden of showing the
16 absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S.
17 317, 323 (1986). The burden then shifts to the non-moving party to identify
18 specific facts showing there is a genuine issue of material fact. *See Anderson v.*
19 *Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). “The mere existence of a scintilla
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1 of evidence in support of the plaintiff's position will be insufficient; there must be
2 evidence on which the jury could reasonably find for the plaintiff." *Id.* at 252.

3 For purposes of summary judgment, a fact is "material" if it might affect the
4 outcome of the suit under the governing law. *Id.* at 248. Further, a material fact is
5 "genuine" only where the evidence is such that a reasonable jury could find in
6 favor of the non-moving party. *Id.* The Court views the facts, and all rational
7 inferences therefrom, in the light most favorable to the non-moving party. *Scott v.*
8 *Harris*, 550 U.S. 372, 378 (2007).

9 **B. § 1983 Claim**

10 A cause of action pursuant to 42 U.S.C. § 1983 may be maintained "against
11 any person acting under the color of law who deprives another 'of any rights,
12 privileges, or immunities secured by the Constitution and laws' of the United
13 States." *Southern Cal. Gas Co., v. City of Santa Ana*, 336 F.3d 885 (9th Cir. 2003)
14 (citing 42 U.S.C. § 1983). The rights guaranteed by § 1983 are "liberally and
15 beneficently construed." *Dennis v. Higgins*, 498 U.S. 439, 443 (1991).

16 **1. Judicial Deception**

17 For a Fourth Amendment judicial deception claim to survive summary
18 judgment, a plaintiff must (1) make a "substantial showing" of deliberate falsehood
19 or reckless disregard for the truth and (2) establish that, but for the dishonesty, the
20 challenged action would not have occurred." *Liston v. County of Riverside*, 120

1 F.3d 965, 973 (9th Cir. 1997). If both requirements are satisfied by plaintiff, the
2 matter should go to trial. *Id.* “Materiality is for the court, state of mind is for the
3 jury.” *Butler v. Elle*, 281 F.3d 1014, 1024 (9th Cir. 2002)(citing *Hervey v. Estes*,
4 65 F.3d 784, 789 (9th Cir. 1995)). Rasmussen claims that Hobbs’ allegedly false
5 statement in the affidavit that Rasmussen was Brittany’s “father” was the only
6 evidence in the affidavit to establish the requisite parental relationship between
7 Brittany and Jacobsen necessary to charge a domestic violence offense. Because
8 the charge was a domestic violence offense, a local court rule was triggered that
9 prevented Rasmussen from posting bond, and resulted in his protracted detention
10 in jail over the long Memorial Day weekend.

11 a. Deliberate Falsehood or Reckless Disregard for the Truth

12 First, Rasmussen must make a “substantial showing” that Hobbs acted with
13 deliberate falsehood or reckless disregard for the truth in preparing the affidavit.
14 *See United States v. Stanert*, 762 F.2d 775, 781 (9th Cir. 1985)(“[c]lear proof of
15 deliberat[ion] or reckless[ness]” is not required at the summary judgment stage).
16 If a plaintiff makes the requisite “substantial showing,” then the question of intent
17 or recklessness is a factual question to be decided by the trier of fact. *Liston*, 120
18 F.3d at 974. However, “[o]missions or misstatements resulting from negligence or
19 good faith mistakes will not invalidate an affidavit which on its face establishes
20 probable cause.” *Ewing v. City of Stockton*, 588 F.3d 1218, 1224 (9th Cir.

1 2009)(noting judicial deception claim cannot be based on an officer’s erroneous
2 assumptions about the evidence he has received).

3 After Hobbs arrested Rasmussen, he filed a “Statement of Arresting Officer
4 and Preliminary Finding of Probable Cause” including the statement: “Brittany
5 stated to this officer and can testify that her father, Donald Rasmussen ..., was at
6 her residence and they became involved in a heated verbal argument over the
7 boyfriend that she is currently seeing.” ECF No. 14 at 16. Rasmussen argues that
8 according to Hobbs’ own report and deposition testimony, he knew that
9 Rasmussen was not Brittany’s biological “father,” and because of this false
10 information intentionally provided to the court, Rasmussen was held in jail without
11 bond over the holiday weekend on the domestic violence charge. *See* ECF No. 14
12 at 12-14. In his deposition, Hobbs agreed that by using the word “father” he was
13 “giving the judge the impression that [Rasmussen] was [Brittany’s] biological
14 father.” ECF No. 23 at 13-14. However, while Hobbs concedes that it may have
15 been more accurate to refer to Rasmussen as a “step-father” instead of “father,” he
16 maintains that he did not intend to mislead anyone, as he considers a stepfather to
17 be a father. ECF No. 23 at 14; ECF No. 27 at ¶¶ 25, 28. Moreover, according to
18 Hobbs, Brittany repeatedly referred to Rasmussen as her “father” during his
19 interview, and based on the entire story Brittany reported to Hobbs, he concluded
20 that the two treated each other as father and daughter. *Id.* at ¶¶ 24-25. Hobbs also

1 contends that Rasmussen knew he was being arrested for domestic violence
2 assault, but never stated that he was not the stepfather of Brittany or the husband of
3 Jacobsen.

4 Rasmussen relies on *Chism* to argue that Hobbs' admission that he knew
5 Rasmussen was not Brittany's biological father, is sufficient to make a "substantial
6 showing" that Hobbs acted with deliberate falsehood or reckless disregard for the
7 truth when he used the word "father" in the affidavit. *See Chism v. Washington*
8 *State*, 661 F.3d 380, 387-88 (9th Cir. 2011). In *Chism*, the court found evidence
9 that omissions and false statements contained in the affidavit were all within the
10 affiant's personal knowledge, and "[a] reasonable factfinder could also find that
11 the officers acted recklessly or intentionally because the false statements and
12 omissions contained in the affidavit all *bolster* the case for probable cause, which
13 suggests that the mistakes were not the product of mere negligence." *Id.* at 388
14 (emphasis in original). The Court finds this case is distinguishable from *Chism*.
15 Here, Hobbs relied on repeated references by Brittany during their interview at the
16 police station to Rasmussen as her "father." According to the exact text of Hobbs'
17 affidavit, "Brittany stated to this officer and can testify that her father Donald
18 Rasmussen, ..." ECF No. 14 at 16. Importantly, while Brittany disputes that she
19 said Rasmussen and her mother are married or that she lived in their household
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1 since she was a baby, she does not deny repeatedly referring to Rasmussen as her
2 “father” during her interview with Hobbs. See ECF No. 22.

3 Moreover, while Hobbs’ genuine belief that a “father” is inclusive of
4 “stepfathers” is perhaps a negligent assumption, the Court finds that characterizing
5 Rasmussen as a “father” instead of “stepfather” in the affidavit does not rise to the
6 level of deliberate falsehood or reckless disregard for the truth. Unlike *Chism*,
7 using the word “father” instead of “stepfather” does not effectively bolster the case
8 for probable cause, as stepfathers are included in the definition of “family or
9 household member” under the domestic violence statute. *See* Wash. Rev. Code §
10 10.99.020(3); *see also Chism*, 661 F.3d at 388. As discussed below, undisputed
11 evidence of Brittany’s repeated references to Rasmussen as her “father,” combined
12 with the fact that Rasmussen was present at the altercation with Brittany ostensibly
13 to protect Jacobsen, and the fact that Rasmussen wore a ring on his ring finger,
14 were sufficient for Hobbs to reasonably deduce that Rasmussen acted as Brittany’s
15 stepfather even if he was admittedly not her biological father. The Court finds that
16 Rasmussen does not uphold his burden on summary judgment to make a
17 “substantial showing” that Hobbs acted with deliberate falsehood or reckless
18 disregard for the truth in submitting his affidavit.

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1 b. Materiality

2 The second element in a judicial deception claim, to be decided by the
3 Court, is the materiality of the allegedly false statements or omissions. *See Butler*,
4 281 F.3d at 1024. “A defendant challenging an affidavit must also show that the
5 affidavit purged of those falsities and supplemented by the omissions would not be
6 sufficient to support a finding of probable cause.” *Stanert*, 762 F.2d at 782. To
7 find a domestic violence offense, there must be evidence of a statutorily
8 established relationship between the accused and the alleged victim of “family or
9 household members,” which includes persons who have a legal parent-child
10 relationship “including stepparents and stepchildren.” Wash. Rev. Code §
11 10.99.020(3). Hobbs’ affidavit stated that Rasmussen was Brittany’s “father” in
12 order to establish probable cause on the domestic violence offense, and it is
13 undisputed that the affidavit did not include any other evidence about the
14 relationship between Rasmussen and Brittany. Rasmussen argues that when the
15 allegedly false statement is purged from the affidavit there is not probable cause to
16 support a domestic violence charge, and “but for” the misrepresentation that
17 Rasmussen was Brittany’s father, Rasmussen would have been eligible to post
18 bond for Fourth Degree Assault.

19 Hobbs responds that had he identified Rasmussen as Brittany’s stepfather,
20 instead of father, and set forth the omitted background for his conclusion that

1 Rasmussen was Brittany's father, his affidavit would be sufficient to support a
2 finding of probable cause. The Court agrees. As an initial matter, the Court once
3 again finds no evidence in Brittany's declaration or in any other portion of the
4 record disputing that Brittany reported to Hobbs that her "father" assaulted her, nor
5 does she deny that she referred to Rasmussen repeatedly as her father. However, if
6 Hobbs were to replace the allegedly dishonest "father" with "stepfather" and
7 supplement the omitted information, including: Brittany's repeated references to
8 Rasmussen as her father, Rasmussen's presence at the altercation with Brittany
9 ostensibly to protect Jacobsen, and the fact that Rasmussen wore a ring on his ring
10 finger; the Court finds the affidavit would be sufficient to support a finding of
11 probable cause that Brittany and Rasmussen had the requisite statutory relationship
12 for a domestic violence charge.

13 Thus, even in the light most favorable to Rasmussen, the Court finds he does
14 not make the requisite showing to survive summary judgment on his judicial
15 deception claim.⁴

16 ⁴ The Court notes that it made this determination without considering the disputed
17 facts of whether Rasmussen and/or Brittany stated that Rasmussen and Jacobsen
18 were married, or that Brittany lived with Rasmussen since she was a baby. Nor did
19 the Court consider facts offered by Hobbs to support a finding of probable cause
20 that were obtained only after the filing of the instant lawsuit. *See Allen v. City of*

2. Probable Cause⁵

“Arrest by police officers without probable cause violates the Fourth Amendment’s guarantee of security from unreasonable searches and seizures, giving rise to a claim for false arrest under § 1983.” *Caballero v. City of Concord*, 956 F.2d 204, 206 (9th Cir. 1992). “An officer has probable cause to make a warrantless arrest when the facts and circumstances within his knowledge are sufficient for a reasonably prudent person to believe that the suspect has committed a crime.” *Rosenbaum v. Washoe County*, 663 F.3d 1071, 1076 (9th Cir. 2011). “In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *Brinegar v. United States*, 338 U.S. 160, 175 (1949). Once probable cause is established, an officer is under no duty to further investigate or look for additional evidence which may exculpate the accused. *See Broam v. Bogan*, 320 F.3d 1023, 1032 (9th Cir. 2003).

Portland, 73 F.3d 232, 236 (9th Cir. 1995)(“Probable cause must be determined at the time the arrest is made.”).

⁵ Rasmussen conceded at oral argument that he was not arguing lack of probable cause for the charge of assault. Rather, he is only arguing that Hobbs did not have probable cause for the domestic aspect of the charge.

1 Rasmussen claims that Hobbs determined there was probable cause based on
2 only two heavily disputed facts, namely, that Hobbs was told (1) that Rasmussen
3 was married to Brittany's mother and (2) that Brittany lived in Rasmussen's house
4 since she was a baby. ECF No. 18 at 9. Rasmussen also disputes that he wore a
5 wedding ring, and disputes that he was asked questions before he was arrested and
6 denies that certain statements were made. However, as indicated in detail above,
7 even assuming *arguendo* that Rasmussen and/or Brittany did not make the disputed
8 statements to Hobbs, or that Rasmussen was not asked questions, sufficient
9 evidence remains to support a finding of probable cause to arrest Rasmussen on a
10 domestic violence offense. Most significantly, Brittany does not deny making
11 repeated statements that Rasmussen was her "father" during her interview with
12 Hobbs. Based on the statements made by Brittany that are not in genuine dispute,
13 including: Rasmussen's presence at the altercation with Brittany, his presence at
14 the residence he shared with Jacobsen, and his admission that he wore a ring on his
15 ring finger; the Court finds that Rasmussen does not uphold his burden to show
16 that triable issues of fact remain as to whether Hobbs had probable cause to arrest
17 Rasmussen on the domestic violence charge.

18 **3. Qualified Immunity**

19 As Rasmussen correctly points out, the Ninth Circuit has held that
20 governmental employees are not entitled to qualified immunity on judicial

1 deception claims. *Chism*, 661 F.3d at 393. However, as indicated above, the Court
2 found that Rasmussen does not survive summary judgment on the judicial
3 deception claim. Therefore, the Court may proceed with a qualified immunity
4 analysis. The qualified immunity defense allows for mistaken judgments and
5 protects “all but the plainly incompetent or those who knowingly violate the law.”
6 *Hunter v. Bryant*, 502 U.S. 224, 229 (1991). In order to analyze a claim of
7 qualified immunity, the court must determine whether, in the light most favorable
8 to the plaintiff, defendant’s conduct violated a constitutional right, and whether the
9 right was clearly established at the time of the alleged misconduct. *See Saucier v.*
10 *Katz*, 533 U.S. 194, 201 (2001), *receded from in Pearson v. Callahan*, 555 U.S.
11 223, 236 (2009) (holding that it is within the sound discretion of the district court
12 to decide which of the two prongs should be addressed first). If the answer to
13 either of these questions is “no” then the officer cannot be held liable. *Glenn v.*
14 *Washington County*, 673 F.3d 864, 870 (9th Cir. 2011).

15 As discussed in the previous section, the Court has found no genuine issue
16 of material fact exists as to whether Hobbs had probable cause to arrest Rasmussen
17 on the domestic violence charge. Further, even if the arrest was made without
18 probable cause, the Court finds Hobbs is still entitled to qualified immunity
19 because it was objectively reasonable for him to believe that he had probable
20 cause, despite the fact that he was ultimately mistaken as to the existence of a legal

1 relationship between Brittany and Rasmussen. *See Rosenbaum*, 663 F.3d at 1078
2 (“the question in determining qualified immunity is whether all reasonable officers
3 would agree that there was no probable cause in this instance.”). Thus, even in the
4 light most favorable to Rasmussen, the Court finds Hobbs is entitled to qualified
5 immunity.

6 **ACCORDINGLY, IT IS HEREBY ORDERED:**

7 1. Defendants’ Motion to Strike, ECF No. 25, is **DENIED**.

8 2. Defendants’ Motion for Summary Judgment, ECF No. 9, is **GRANTED**.

9 The District Court Executive is hereby directed to enter this Order and a
10 judgment accordingly, provide copies to counsel and CLOSE the file.

11 **DATED** March 21, 2013.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge